

January 18, 2005

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ILLINOIS
COMMERCE COMMISSION

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04-0811
CHIEF CLERK'S OFFICE

Strategic Energy, L.L.C.

Application for Certificate of Service
Authority under Section 16-115 of the
Public Utilities Act.

SERVED ELECTRONICALLY

RESPONSE OF STRATEGIC ENERGY, LLC TO
ADMINISTRATIVE LAW JUDGE'S RULING

1. Please explain in greater detail how Applicant complies with the reciprocity requirement in its application, given the definition of principal source of electricity.

Response: The Illinois Public Utilities Act (Act) provides that an Alternative Retail Electric Supplier (ARES) applicant's "principal source of electricity" shall mean "a single source of electricity that supplies at least 65% of the applicant's electric power and energy." In its ARES application Strategic Energy (Strategic) presents three alternative ways in which the Illinois Commerce Commission (Commission) should or could apply this "principal source" provision to Strategic.

Strategic's primary argument is that its principal source of electricity will be the Regional Transmission Organization (RTO) that provides service in each service area: in the Commonwealth Edison Company (ComEd) service area, the RTO will be the PJM Interconnected Network (PJM); and in the Ameren Illinois Power (AmerenIP) service area, the RTO will be the Midwest Independent System Operator (MISO). Given that ARES applicants can apply for certification with individual utilities, it is appropriate for applicants to designate a principal source of electricity for each utility service area. Further, as explained in Strategic's application, this "principal source" argument reflects the way in which RTO markets work. As an RTO market participant, Strategic would submit a Demand Bid to the RTO in order to meet the forecasted demand of its customers. The RTO in turn would supply the electric power and energy to fulfill that customer demand. Simply put, Strategic would place an order for electricity, which the RTO would fill. The RTO would in fact be supplying 100% of Strategic's electric power and energy.

In the alternative, Strategic proposes that it would be willing to comply with the reciprocity requirement by purchasing its electric power and energy from a single pool of wholesale counterparties (see Strategic Exhibit 14), each of whom have utility affiliates with service territories that are open to retail competition. Under this scenario, Strategic would purchase at least 65% of its electric power and energy needs from a single pool. Strategic notes that from both an operational and a policy perspective obtaining electric power and energy from a pool of counterparties is no different than identifying a single

counterparty. That is, a single counterparty in all likelihood would use multiple generators (and even multiple counterparties itself) to provide an ARES with the electricity it requires. Furthermore, it would serve no legitimate policy purpose to prevent an ARES from entering into procurement contracts with counterparties that are affiliates of a utility that already has opened its service territory to retail competition. To the contrary, public policy would be harmed if the Commission were to require an ARES to contract with a single counterparty, insofar as the ARES would be restricted from shopping the market to obtain the lowest cost electricity for its customers. Allowing an ARES to use a pool of counterparties is in the best interest of retail customers, and is more conducive to the development of retail competition.

Finally, Strategic proposes that if the Commission rejects all other means by which Strategic may satisfy the reciprocity clause of the Act, Strategic, as a last resort, would agree to supply at least 65% of its purchased power from one of the companies listed on Confidential Exhibit 14. As noted above, given that ARES applicants can apply for certification with individual utilities, Strategic believes it is appropriate for applicants to designate a principal source of electricity for each utility service area. Thus, Strategic would agree to supply at least 65% of its purchased power for its customers in the ComEd service area from one of the companies on Confidential Exhibit 14 and would agree to supply at least 65% of its purchased power for its customers in the AmerenIP service area from one of the companies on Confidential Exhibit 14.

2. With respect to Confidential Exhibit 14, please provide the complete, accurate name of each entity in the column entitled "Wholesale Counter Party". With respect to Confidential Exhibit 14, please provide the complete, accurate name of each entity in the column entitled "Utility Affiliate."

Response: See attached revised version of Confidential Exhibit 14 containing the complete, accurate name of each entity in the columns entitled "Wholesale Counter Party" and "Utility Affiliate." Strategic is submitting a redacted version of this Confidential Exhibit and again requests that it be protected from disclosure.

3. Please explain in greater detail why Applicant is seeking confidential treatment of certain portions of its application, specifically why any of the application pertaining to reciprocity should be considered confidential, specifically Exhibit 1 to Attachment C.

Response: In the motion for Confidential Treatment and Protective Order filed on December 29, 2004, Strategic seeks confidential treatment of only three items in its application relating to Attachment C, reciprocity¹:

¹ As noted in its Motion for Confidential Treatment and Protective Order, Strategic also asks for confidential treatment of Attachment E to Strategic's application which contains detailed financial data regarding Strategic. Public disclosure of this information would harm Strategic. The information is confidential and proprietary. Because the retail electric service industry is highly competitive, it is imperative that public disclosure of this information be prohibited for five years as authorized by the Illinois Administrative Code. Ill. Adm. Code 200.430(b)(authorizing protection for up to five years). See also, *Blackhawk Energy Services, L.L.C. Petition for Emergency Relief to Protect a Portion of Petitioner's*

- Exhibit 1
- Exhibit 14
- The redacted sentences of Strategic's reciprocity statement

Each of these items should be treated as confidential in accordance with section 451.60 of the Illinois Administrative Code for five years as authorized by Ill. Adm. Code 200.430(b). Section 451.60 provides that if an applicant believes any of the information to be disclosed by the applicant is privileged or confidential, the applicant should request that the Commission enter an order to protect the confidential, proprietary or trade secret nature of the information pursuant to 83 Ill. Adm. Code 200.430. 83 Ill. Adm. Code 451.60.

Because the retail electric service industry is highly competitive, it is imperative that the confidential information contained in Strategic's application and in Strategic's January 18, 2005 verified responses to the ALJ's January 7, 2005 Ruling be afforded protection from disclosure under sections 451.60 and 200.430 for five years to prevent competitive harm to Strategic.

In addition, Section 7(g) of the Illinois Freedom of Information Act (5 ILCS 140/7(g)) exempts from disclosure the very type of information Strategic seeks to protect:

Trade secrets and commercial or financial information obtained from a person or business where such trade secrets or information are proprietary, privileged or confidential, or where disclosure of such trade secrets or information may cause competitive harm.

As discussed more fully below, since Exhibits 1, 14 and the redacted portions of Strategic's reciprocity statement are confidential and would cause competitive harm if disclosed, an order protecting them is appropriate. The Commission has issued several orders granting motions seeking protection of confidential and competitively sensitive information in the context of ARES applications. *See e.g., Blackhawk Energy Services, L.L.C. Petition for Emergency Relief, supra*, Illinois Commerce Commission, No. 03-0086 (March 12, 2003)(affording financial data submitted by Blackhawk in connection with its ARES application in 2001 confidential treatment through 2006). *See also, Constellation NewEnergy, Inc., Petition for Emergency Relief to Protect a Portion of Petitioner's Application to Amend Certificate of Service Authority as an Alternative Retail Electric Supplier from Disclosure for not less than five years, Illinois Commerce Commission, No. 04-0066* (March 17, 2004)(affording annual compliance report protection for five years). In fact, an almost identical Motion for Confidential Treatment filed in an ARES application docket was granted in a ruling issued just four months ago on September 14, 2004. *Nordic Marketing of Illinois Petition for Certificate of Authority*

Application for a Certificate of Service Authority to Operate as an Alternative Retail Electric Supplier from Disclosure for Not less than Five Years, Illinois Commerce Commission, No. 03-0086 (March 12, 2003)(affording financial data submitted by Blackhawk in connection with its ARES application in 2001 confidential treatment through 2006).

under Section 16-115, No. 04-0334 (Sept. 14, 2004). Strategic's information similarly should be afforded confidential treatment.

- Exhibit 1 – Information Strategic Energy Purchased from Open Access Technology International (OATI)

Exhibit 1 is information that Strategic purchased from OATI. The Exhibit contains information including what Strategic purchased *and sold* in the Commonwealth Edison ComEd and Illinois Power generation control areas or where ComEd or Illinois Power served as the transmission provider.

Strategic and OATI have a confidential agreement whereby OATI grants Strategic the right to use OATI Electronic Tagging Specifications (ETS). OATI provides tagging services in accordance with the North American Electric Reliability Council (NERC) Electronic Tagging-Functional Specifications. Like other end users of ETS, Strategic can view only the tags in which Strategic is included in the transmission path².

Moreover, even though Strategic is a licensed ETS user, Strategic could not compile the information in Exhibit 1 without making a special request to OATI. In order to obtain the information in Exhibit 1, Strategic Energy's energy professionals spent time and resources in order to determine the scope and content of the report. The information is commercially valuable. Strategic paid OATI over \$500 above its monthly license fee for this single report.

² By way of further background, OATI tags each interchange transaction before implementation. In addition to providing necessary operating information, the interchange transaction tag is the official request from the purchasing and selling entities to the control areas to implement the interchange transaction. See NERC Policy 3, v. 5.2, Interchange, Section A.2.

The complete tag, including all updates and notifications, is provided only to the following entities:

- Generation Providing Entity
- Generation CONTROL AREA
- TRANSMISSION PROVIDERS
- Transmission Customers
- SCHEDULING ENTITIES
- Intermediate PURCHASING-SELLING ENTITIES (Title-Holders)
- Load CONTROL AREA
- LOAD-SERVING ENTITY
- Market Redispatch Notification Entities (if specified)
- Security Analysis Services

NERC Policy 3, v. 5.2, Interchange, Section A.2.2. While one or more of these entities would have the complete tag for all of the transactions in which they play one of these listed roles, they would have only the tags for transactions in which they play one of these roles - and not the compilation of Strategic tags contained in Exhibit 1. Strategic's wholesale counter-parties and competitors would not have all of the tags contained in Exhibit 1 - nor should they. While one single tag or even a group of tags involving the same entities may be available to the entities playing a role in those transactions, the compilation contained in Exhibit 1 reflects multiple transactions with a variety of entities and is not public information.

Strategic has not made the information available to anyone other than the Illinois Commerce Commission. Even within Strategic Energy, the information has been distributed only on a need-to-know basis.

As noted above, the retail electricity business is highly competitive and the OATI information is competitively sensitive. If the information were made available to the public, including potential competitors, Strategic would suffer competitive harm.

- Exhibit 14

Similarly, Exhibit 14 contains competitive information, the public disclosure of which would cause Strategic competitive harm. Exhibit 14 contains the identity of some of Strategic's wholesale counter-parties that own and control transmission and distribution systems to which power and energy is physically and economically deliverable by ComEd, AmerenIP, or their affiliates. The Exhibit is not necessarily a complete list of all entities that own or control transmission and distribution to which power and energy is physically and economically deliverable by ComEd, AmerenIP or their affiliates. Instead, it contains Strategic-specific information and thus discloses Strategic-specific competitive information about potential purchasing strategies.

Even though information about Strategic's wholesale purchases is available in forums such as FERC-required reports, the information in the form contained in Exhibit 14 has never been disclosed by Strategic to anyone other than the Commission for purposes of Strategic's ARES application.

- Redacted Sentences in Attachment C

The few redacted sentences in Attachment C refer to or contain information derived from Exhibit 1 or 14. Since Exhibits 1 and 14 deserve confidential treatment for the reasons stated above, references to and work product summaries of the information in those redacted Exhibits to Attachment C similarly deserve confidential treatment. In fact, the information redacted from pages 1 and 8 of Attachment C is even more confidential and commercially valuable because Strategic's energy professionals invested time and resources to discern it from the OATI report.

Consequently, Strategic seeks confidential treatment of this information.

- Supplemental, Confidential Response

In its revised version of Confidential Exhibit 14, Strategic has included a Supplemental, Confidential Response to this ruling. As noted above, Strategic believes that the confidential portions of this response to the ALJ's ruling should be afforded protection from disclosure under sections 451.60 and 200.430 for five years to prevent competitive harm to Strategic.

4. Subsection 451.30(a) requires Applicant to publish notice of its application for certification in the Official State Newspaper within 10 days following the filing of the application for certification. Furthermore, Applicant must file proof of publication with the Clerk of the Commission when notice publication has been accomplished. As of January 5, 2005, the Clerk of the Commission had not yet received proof that such notice was published.

Response: See attached Certificate of Publication from the Edwardsville Intelligencer showing publication of Notice of Strategic Energy's Application for ARES Certification on January 6, 2005.

5. The applicant should specify only one subpart of Section 451 to meet financial requirements. The applicant refers to Sections 451.110(a)(1-6), 451.220(a)(1-6), and 451.320(a)(1-6). Please refer to Section 451.200.

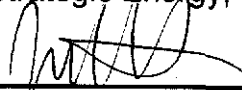
Response: Strategic Energy reproduced the entire text of Section 18 of the ARES Application on Exhibit E for reference only. Strategic Energy is meeting the financial qualifications as stated in Section 451.220(a)(6).

6. In Attachment E, the applicant shows \$414,732 in interest expense and \$0 debt. The applicant should explain all \$414,732 of interest expense. The applicant should include a description of all long-term and short-term debt for 2003 including any off balance sheet debt. The applicant should recalculate the financial ratios to include any notes payable if applicable. The applicant should demonstrate all accounts used to calculate funds from operations.

Response: Regarding interest expense, the \$414,732 shown on the Financial Qualifications spreadsheet and referenced on page 3 of the Audited Financial Statements in Attachment E, is interest that Strategic Energy pays to counter-parties that have cash collateral with Strategic Energy (see also page 11, section 4 of the Audited Financial Statements for an explanation of Cash Collateral). Regarding long-term and short-term debt, Strategic Energy reiterates that it does not have any outstanding debt, long-term or short-term, at time of reporting. Strategic Energy also has no off balance sheet debt.

Respectfully submitted,

Strategic Energy, LLC



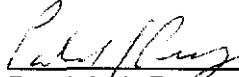
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VERIFICATION

STATE OF Pennsylvania)
COUNTY OF Allegheny)

ss:

Patrick J. Purdy, being first duly sworn, deposes and says that he is the Chief Operating Officer (COO) of Strategic Energy, LLC; that he has read the foregoing Response of Strategic Energy, LLC to Administrative Law Judge's Ruling and all of the attachments accompanying and referred to within the Response; and that the statements contained in the Response and the attachments are true, correct and complete to the best of his knowledge, information and belief.



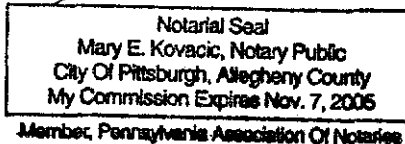
Patrick J. Purdy
Chief Operating Officer
Strategic Energy, LLC

Subscribed and sworn to before me
this 1st day of January, 2005.



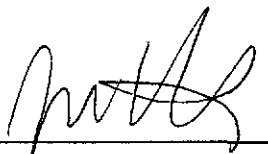
Notary Public

[Stamp of Notary]



CERTIFICATE OF SERVICE

I, Julie A. Coletti, certify that as of January 19, 2005, I served a copy of the Response of Strategic Energy, LLC to Administrative Law Judge's Ruling by First Class Mail to the individuals listed below.

A handwritten signature in black ink, appearing to read 'Julie A. Coletti', is written over a horizontal line.

Julie A. Coletti

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